



CENTER FOR
FOOD SAFETY

December 22, 2014

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

SUBMITTED VIA FOIA ONLINE

RE: Freedom of Information Act Request

To the Environmental Protection Agency (EPA) FOIA Officer:

The Center for Food Safety (CFS) is a 501(c)(3) nonprofit organization that addresses the impacts of our current industrial food production system on human health, animal welfare, and the environment. Consistent with this mission and pursuant to 40 C.F.R. Part 2 and the Freedom of Information Act, 5 U.S.C. § 552, I, Cristina Stella, on behalf of CFS, respectfully request the following information:

1. Any and all documents relating to Experimental Use Permits for field trials of genetically engineered American Chestnut.

“All documents” includes but is not limited to all correspondence, minutes, memoranda, communications and/or other documents received from or given to other agencies, maps, plans, drawings, emails, reports, studies, research, tests, testing protocols, databases, and phone notes. This request includes all documents that have ever been within your custody or control, whether they exist in agency “working,” investigative, retired, electronic mail, or other files currently or at any other time.

CFS requests this information in light of the President’s “Memorandum for the Heads of Executive Departments and Agencies” dated January 21, 2009, which states:

The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails.... In responding to requests under the FOIA, executive branch agencies (agencies) should act promptly and in a spirit of cooperation, recognizing that such agencies are servants of the public. All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA. The presumption of disclosure also means that agencies should take affirmative steps to make information public.

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Exec. Memorandum for the Heads of Executive Departments and Agencies, 74 Fed. Reg. 4,683 (Jan. 21, 2009). This request is being sent to the EPA FOIA officer with the understanding that it will be forwarded to other officers, offices, or departments with information pertinent to this request.

REQUEST FOR FEE-WAIVER

CFS requests that pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), EPA waive all fees in connection with the procurement of this information. As demonstrated below, the nature of this request meets the test for fee waiver as expressed in the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(A)(iii).

In deciding whether the fee waiver criteria is satisfied, CFS respectfully reminds EPA that FOIA is inclined toward disclosure and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations. *See* 132 Cong. Rec. S. 14270-01, (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”) Furthermore, the Ninth Circuit Court of Appeals has interpreted this fee waiver section broadly, holding that the section “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy).

I. The present disclosure is in the public interest because it will contribute significantly to public understanding of the operations or activities of government.

The requested disclosure will contribute to public understanding of the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).

A. The subject of the disclosure concerns “the operations and activities of the government.”

The requested information pertains to EPA’s consideration and issuance of experimental use permits for field trials of genetically engineered American chestnut. EPA is the federal agency statutorily mandated to issue and regulate such permits. It is irrefutable that issuing such permits is a clearly identifiable operation and activity of government. The information considered by EPA through the permit process is of high value to the public knowledge and discourse.

B. The disclosure is “likely to contribute significantly to public understanding” of government operations or activities.

As discussed above, the present disclosure will provide the public a better understanding of EPA's role in regulating genetically engineered organisms, as well as provide the public with information about a specific species that is of great public interest. CFS is a nonprofit organization that informs, educates, and counsels the public—via legal action, our website, our True Food Network, books and reports, and our quarterly newsletter, *Food Safety Now!*—on the harm done to human health, animal welfare, and the environment by industrial agriculture. Accordingly, CFS is an effective vehicle to disseminate information on experimental use permits, genetic engineering, and their impacts on the environment.

In addition, the release of this information will have a significant impact on public understanding because the effect of genetic engineering and field trials has come under serious public scrutiny, thanks in large part to the work of organizations like CFS. Even a single document has the potential for contributing to public understanding. See *Elizabeth Eudey v. Cent. Intelligence Agency*, 478 F. Supp. 1175, 1176 (D.D.C. 1979). Simultaneously, this FOIA request will help CFS fulfill its well-established function of public oversight of government action. Public oversight of agency action in particular is a vital component in our democratic system and is the bedrock upon which FOIA stands.

II. Obtaining the information is of no commercial interest to CFS.

CFS is a 501(c)(3) nonprofit environmental advocacy organization that works to address the impacts of our food production system on human health, animal welfare, and the environment. CFS works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. See e.g., OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. In no manner does CFS seek information from EPA for commercial gain or interest. CFS respectfully files this FOIA request pursuant to its goal of educating the general public on the adverse effects of industrial agriculture. Upon request and free of charge, CFS will provide members of the public with relevant information obtained from EPA.

Based upon the foregoing, CFS requests that this FOIA request be classified within the EPA's fee waiver category and that EPA send the requested information as required by law. As this is a matter of extreme importance to CFS, we look forward to a determination within twenty working days as required by FOIA. 5 U.S.C. § 552(a)(6)(A)(i). If the responsive records are voluminous please contact us to discuss the proper scope of the response. If any exemption from FOIA's disclosure requirement is claimed, please describe in writing the general nature of the document and the particular legal basis upon which the exemption is claimed. Should any document be redacted, please indicate the location of the redaction through the use of black ink. Please provide any and all non-exempt portions of any document which may be partially exempt due to some privilege as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

Please send all materials to 303 Sacramento St, 2nd Floor, San Francisco, CA 94111; or electronically to cstella@centerforfoodsafety.org. Please call me at (415) 826-2770 if you have any further questions about this request. Thank you for your attention to this matter.

Sincerely,

Cristina Stella

Staff Attorney